

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

Metal Bank of America, Inc. (State Road) Site

Docket No. CERC-03-2016-0055DA

Baltimore Gas & Electric Company
Consolidated Edison Company of New York
Delmarva Power & Light Company
Long Island Lighting Company d/b/a LIPA
Orange & Rockland Utilities
PECO Energy Company
Potomac Electric Power Company
PPL Electric Utilities Corporation
Public Service Electric and Gas Company
Virginia Electric and Power Company

Respondents

Proceeding Under Sections 106(a) and
122(a) of the Comprehensive Environmental
Response, Liability, and Compensation Act of 1980,
as amended, 42 U.S.C. §§ 9606(a) and 9622(a)

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR REMOVAL RESPONSE ACTION**

The parties to this Administrative Settlement Agreement and Order on Consent ("Settlement Agreement"), Baltimore Gas & Electric Company, Consolidated Edison Company of New York, Delmarva Power & Light Company, Long Island Lighting Company (d/b/a LIPA), Orange & Rockland Utilities, PECO Energy Company, Potomac Electric Power Company, PPL Electric Utilities Corporation, Public Service Electric and Gas Company, and Virginia Electric and Power Company (collectively, "Respondents") and the United States Environmental Protection Agency ("EPA"), having agreed to the entry of this Settlement Agreement, it is therefore Ordered, that:

I. JURISDICTION AND GENERAL PROVISIONS

- 1.1 This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622(a); delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the Director of the Hazardous Site Cleanup Division, EPA Region III. This Settlement Agreement pertains to property located at 6801 State Road in the City of Philadelphia, Philadelphia County, Pennsylvania. The property will hereinafter be referred to as the Metal Bank of America, Inc. (State Road) Site or "the Site", and is further described in paragraph 3.3 below.
- 1.2 All terms and conditions of this Settlement Agreement, including any modifications hereto, are required by this Settlement Agreement. The Respondents agree to undertake all actions (the "Work") required by the terms and conditions of this Settlement Agreement and to comply with all such terms and conditions.
- 1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300, and CERCLA.
- 1.4 EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections III (EPA's Findings of Fact), IV (EPA's Conclusions of Law) and V (Determinations) of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest EPA's authority or jurisdiction to issue or to enforce this Settlement Agreement.

II. STATEMENT OF PURPOSE

- 2.1 In entering into this Settlement Agreement, the mutual objectives of EPA and Respondents are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate, or eliminate the release or threat of release of hazardous substances at the Site (as hereinafter described), by containing and preventing the migration of hazardous substances from the Site.

III. EPA'S FINDINGS OF FACT

- 3.1 Baltimore Gas & Electric Company is a subsidiary of Exelon Corporation and is Maryland's largest natural gas and electric utility. Consolidated Edison Company of New York is a division of Consolidated Edison, Inc. providing electric, gas, and steam to customers in New York City and Westchester County, New York. Delmarva Power & Light Company is a division of PEPSCO Holdings Company distributing electricity to customers in Delaware and Maryland. The Long Island Lighting Company was an electrical power company and natural gas utility for the communities of Long Island, New York. Orange & Rockland Utilities is a division of Consolidated Edison, Inc. providing gas or electric service to customers in New York, New Jersey, and Pennsylvania. PECO Energy Company is a division of Exelon Corporation providing electricity and gas to customers in the Philadelphia, Pennsylvania region. Potomac Electric Power Company is a division of PEPSCO Holdings Company distributing electricity to customers in Washington, DC and Maryland. PPL Electric Utilities Corporation is an electric utility company operating in central and eastern Pennsylvania. Public Service Electric and Gas Company is an electric and gas utility providing services to customers in New Jersey. Virginia Electric and Power Company generates, transmits and distributes electricity for sale in Virginia and North Carolina.
- 3.2 The Site was formerly operated by Metal Bank of America, Inc. ("Metal Bank") and others as a metal scrap yard and transformer-processing facility. Beginning in approximately 1969, Metal Bank was involved in the processing of used transformers to reclaim the copper cores and iron casings. These operations continued until around the fall of 1984 when Metal Bank entered into a lease/sale agreement with Versatile Metals, Inc. ("Versatile Metals").
- 3.3 The Site is located at 6801 State Road in an industrialized area of the City of Philadelphia, Pennsylvania, near the Delaware River. The approximate geographic coordinates for the Site are N 40.02033 and W 75.03895. The Site comprises about six acres and is bound by industrial properties and roadways on all sides. A fence surrounds the Site, which includes one building and is otherwise covered by asphalt that is cracked in places and is sometimes in a state of disrepair. Weeds have been observed growing from the cracks in the asphalt. EPA believes the asphalt cover is between two and three inches thick.
- 3.4 Versatile Metals, Inc. leased and operated the Site for a six-month period in 1984-85. John B. Schorsch owned the Site from around 1968 to 1980, while Metal Bank operated there. EPA has information that Respondents sold to Metal Bank scrap transformers, capacitors, and other materials that were sent to the Site. Operations at the Site led to the disposal of polychlorinated biphenyls ("PCBs") there.

- 3.5 On October 1, 2004, U.C.O.-M.B.A. Corporation, who was then the owner of the Site, recorded with the Commissioner of Records for the City of Philadelphia a Notice of Hazardous Substance Disclosure and Declaration of Restrictions (“Notice and Declaration”) in accordance with Section 512(b) of the Pennsylvania Hazardous Sites Cleanup Act, 35 Pa. Stat. Ann. § 6020.512(b). This Notice and Declaration adopted certain use restrictions for the Site property that will run with the premises. Generally, the use restrictions (a) limit the Site to commercial and industrial use and prohibit residential use; (b) prohibit subsurface excavation beneath and disturbance of the asphalt cover without notice to the Pennsylvania Department of Environmental Protection (“PADEP”); (c) prohibit the use of groundwater at the Site for drinking purposes; (d) require maintenance of the existing Site fencing and monitoring wells; and (e) prohibit use of the Site for activities that would otherwise interfere with the use restrictions identified in the Notice and Declaration, which may only be amended or revoked upon written consent of EPA and PADEP. EPA has requested that the Four Sites Union Trust, the current owner of the Site, update the Notice and Declaration to require long-term maintenance of the asphalt cover
- 3.6 EPA conducted an investigation at the Site in 2008 to determine the extent to which the Site was contaminated with PCBs as a result of past operations and spills there. EPA’s investigation determined that elevated levels of PCBs were present in soils at the Site. In 2010 and 2011, EPA conducted a removal site evaluation and removal assessment at the Site to define and address the potential threats posed to human health and the environment by releases or threatened releases of hazardous substances from the Site.
- 3.7 EPA’s 2008 site investigation identified “hot spot” areas of contaminated soils at the Site with PCB levels as high as 320 parts per million (ppm). Some of these PCBs were found at depths below the groundwater table. Additionally, PCBs were detected at concentrations of approximately 190 mg/kg in shallow soil immediately beneath asphalt covering most of the Site. EPA’s removal site evaluation indicated that PCBs and other hazardous substances are located in the environment (e.g., soil) at the Site and pose a threat of release from the Site.

As part of the removal site evaluation, in April 27, 2011, EPA collected water and sediment samples within a brick sewer drainage system at the Site and sent these samples for laboratory analysis. The analytical results showed that PCBs are likely entering the drainage system from the Site. PCBs in the flow within the drainage system were detected at a concentration of 0.005 µg/L upstream of the Site and at a higher concentration of 6.69 µg/L downstream of the Site. PCB concentrations of approximately 6.4 mg/kg were detected in sediment within the drainage system at another location within the Site.

- 3.8 As a result of a spill occurring at the Site in 1985, Metal Bank conducted a cleanup of the Site. However, in a decision issued in Federal District Court litigation between Versatile

Metals and Metal Bank, Federal District Court Judge James McGirr Kelly ruled that Metal Bank's cleanup of the Site was not consistent with the NCP.

- 3.9 The setting of the Site is industrial. EPA has determined that there has been a release or threat of release of PCBs from the Site through groundwater seepage into the brick drainage system running through the Site. This drainage system ultimately empties to the Delaware River.
- 3.10 Based upon the release of hazardous substances at the Site, EPA issued a Superfund Action Memorandum on September 28, 2011, selecting a removal action (the "Selected Removal Action") to mitigate the potential for further migration of hazardous substances, especially to off-Site locations, and the potential for future exposure to hazardous substances presently located under the asphalt cover at the Site. The Selected Removal Action includes measures to minimize the migration of PCBs and other hazardous substances into and through a brick combined sanitary-and-storm sewer, which may overflow to the Delaware River, as well as steps to minimize the potential for future human exposure to hazardous substances under the asphalt cover at the Site.
- 3.11 On April 20, 2015, the Commonwealth of Pennsylvania Department of Transportation ("PennDOT") and EPA entered into an Administrative Settlement Agreement for Performance of Removal Response Action under Section 122(a) of CERCLA (EPA Docket No. CERC-03-2015-0016DC) by which PennDOT agreed to perform part of EPA's selected removal action ("PennDOT Settlement Agreement"). PennDOT completed this work in October 2015. The work PennDOT performed was done in conjunction with PennDOT's "State Road 95, CP2" project. Specifically, PennDOT installed a liner in the brick drainage system traversing the Site to prevent further releases of PCBs into the drainage system, which ultimately empties into the Delaware River.
- 3.12 Polychlorinated biphenyls are listed as hazardous substances at 40 C.F.R. § 302.4.
- 3.13 Based on the information described above, in the September 28, 2011 Action Memorandum, EPA determined that a threat to public health, welfare, and/or the environment exists due to the release or threatened release of hazardous substances from the Site.

IV. EPA'S CONCLUSIONS OF LAW

- 4.1 The Metal Bank of America, Inc. (State Road) Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 4.2 Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4.3 Polychlorinated biphenyls are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14), because they are listed at 40 C.F.R. § 302.4.

4.4 "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Site and are currently present there.

4.5 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

4.6 Respondents:

- a. Respondent Baltimore Gas & Electric Company is a "person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel [i.e., the Site] owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
- b. Respondent Consolidated Edison Company of New York is a "person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel [i.e., the Site] owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
- c. Respondent Delmarva Power & Light Company is a "person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel [i.e., the Site] owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
- d. Respondent Long Island Lighting Company (d/b/a LIPA) is a "person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel [i.e., the Site] owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
- e. Respondent Orange & Rockland Utilities is a "person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other

party or entity, at any facility or incineration vessel [i.e., the Site] owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

- f. Respondent PECO Energy Company is a "person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel [i.e., the Site] owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
 - g. Respondent Potomac Electric Power Company is a "person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel [i.e., the Site] owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
 - h. Respondent PPL Electric Utilities Corporation is a "person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel [i.e., the Site] owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
 - i. Respondent Public Service Electric and Gas Company is a "person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel [i.e., the Site] owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
 - j. Respondent Virginia Electric Power Company is a "person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel [i.e., the Site] owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
- 4.7 EPA has determined that the Respondents are potentially liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

- 4.8 EPA has determined that “reasonable steps” under Section 101(40)(D) of CERCLA, 42 U.S.C. § 9601(40)(D), shall include, among other things, maintenance of the Selected Removal Action by any future owner of the Site to prevent or limit human, environmental, or natural-resource exposure to PCBs or to any other previously released hazardous substance .

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, and upon EPA's review of information for the Administrative Record, EPA has determined that:

- 5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- 5.2 The Work is necessary to protect the public health and welfare and the environment.
- 5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate, or eliminate the release or threat of release of hazardous substances at or from the Site.

VI. PARTIES BOUND

- 6.1 This Settlement Agreement shall apply to and be binding upon EPA and its agents and upon Respondents and their agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of any Respondent, nor a change in ownership or control of the Site, shall in any way alter Respondents' responsibilities under this Settlement Agreement.
- 6.2 In the event that any Respondent files for or is placed into bankruptcy, that Respondent shall notify EPA within three days of such event.
- 6.3 In the event any Respondent files for corporate dissolution under the laws of the state where it is incorporated, that Respondent shall notify EPA within three days of such event.
- 6.4 The Respondents shall provide a copy of this Settlement Agreement to all contractors, subcontractors, supervisory personnel, laboratories, and consultants retained by Respondents to conduct any portion of the Work to be performed by Respondents pursuant to this Settlement Agreement. Respondents shall require in any and all contracts related to this Site that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Settlement Agreement.

- 6.5 The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms of this Settlement Agreement and to execute and legally bind such Respondent to this Settlement Agreement.
- 6.6 Respondents are jointly and severally liable for compliance with the provisions of this Settlement Agreement. All references to "Respondents" herein shall mean each and every Respondent, both collectively and individually. The failure by one or more of the Respondents to comply with all or any part of this Settlement Agreement shall not in any way excuse or justify noncompliance by any other Respondent. Further, the compliance by one or more Respondents with all or part of this Settlement Agreement shall not in any way excuse or justify noncompliance by any other Respondent.

VII. NOTICE TO THE STATE

- 7.1 Notice of issuance of this Settlement Agreement has been given to the Commonwealth of Pennsylvania pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION

- 8.1 Respondents shall commence and complete performance of the following response action within the time periods specified herein.
- 8.2 Within five (5) business days of the effective date of this Settlement Agreement, Respondents shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel, and other persons who will be primarily responsible for developing the Response Action Plan ("RAP") required by this Section. Respondents shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel and other persons selected by Respondents who will conduct all or any portion of the response action no less than ten (10) business days prior to commencement of the response action to be performed by such persons. Respondents shall ensure that all contractors, subcontractors, supervisory personnel, and/or other persons retained to perform the response action shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondents' selection of all contractors, subcontractors, supervisory personnel, and other persons who will perform the response action; the Respondents' Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondents shall notify EPA within five (5) calendar days of receipt of such EPA disapproval of the person(s) who will replace the one(s) disapproved by EPA. If a person's selection is disapproved by EPA, they shall not perform such specified response action.

8.3 Respondents shall accomplish the following items:

- a. In the Area of Work identified in Figure 1, continue removal site evaluation, including investigation, sampling, analysis, and characterization of PCB contamination consistent with 40 C.F.R. Part 761 as necessary to complete the Work.
- b. Implement erosion and sedimentation controls, as well as storm water management controls necessary to minimize the migration of storm water into any area subject to response activity which exposes PCBs contaminated soil; these actions are intended to minimize the migration of potentially PCB-contaminated storm water from the Site. Actions may include pumping and temporary containment of potentially PCB-contaminated storm water.
- c. Consistent with standards at 40 C.F.R § 761.79(b), decontaminate on-Site waters which are accumulated during on-Site activities described in paragraphs 8.3.a. and 8.3.b. Discharge the accumulated waters to local sewage treatment plant. Or, if this arrangement is not feasible (e.g., due to volume or content of the on-Site wastes or capacity of the treatment plant), dispose of off-site the hazardous substances identified in item paragraph 8.3.a, and other wastes associated with the Work, in accordance with Section 121(d)(3) of CERCLA and 40 C.F.R § 300.440 and 40 C.F.R. § 761.61. Activities may include sampling, bulking, consolidating, drumming, pumping, or otherwise handling the hazardous wastes, hazardous substances, liquids, and wastes to ensure that they are properly transported.
- d. In the Area of Work identified in Figure 1, seal (which may include removing a portion, but not all, of the asphalt material from the existing asphalt cover and replacing such material with new asphalt), or replace and grade, as needed, asphalt cover over all areas of the Site containing PCBs contamination in the soil to minimize the potential for infiltration of surface water through the cover.
- e. Provide site specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP") for actions to be performed at the Site, to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel and equipment, monitoring and control of offsite migration of hazardous substances during the performance of activities at the Site and protection of public health from exposure to hazardous substances during the conduct of activities at the Site pursuant to this Settlement Agreement. Health and safety requirements in the HASP shall be at least as stringent as those set forth in Occupational Safety and Health Administration and EPA requirements, including but not limited to, requirements

contained in 29 C.F.R. § 1910.120 and/or EPA Standard Operating Safety Guides (July 5, 1988).

- f. Develop and follow an expeditious schedule for implementation of the RAP.
- 8.4 Respondents shall submit to EPA for approval a RAP detailing the response action to be implemented for the items specified in paragraph 8.3 above. The submission of the RAP shall be due on the 30th calendar day after the effective date of this Settlement Agreement. To the extent that information concerning the details of a particular item does not yet exist so that it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA for approval, which supplement(s) shall fully detail such items. All references to the review, approval and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall include, among other things, a schedule for expeditious performance of the response actions required by this Settlement Agreement. The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.5 and 8.9 below.
- 8.5 EPA will review the RAP and notify the Respondents of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondents shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within ten (10) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Settlement Agreement. Approval, disapproval, and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Paragraph 8.9 below.
- 8.6 Within ten (10) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondents shall commence implementation of such RAP and complete it in accordance with the RAP and the schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondents to correct or re-perform such portion of the response action pursuant to this Settlement Agreement, Respondents shall correct or re-perform the response action or portion of the response action in accordance with a schedule provided by EPA.
- 8.7 Beginning seven (7) calendar days subsequent to the date of receipt of EPA approval of the RAP and every seven (7) calendar days thereafter, or such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondents that the Work is complete, the Respondents shall provide EPA with a progress report for each preceding seven-day period or if applicable, the period specified in writing by the EPA Project Coordinator. The progress reports shall

include, at a minimum: 1) a description of the response action completed and the actions that have been taken toward achieving compliance with this Settlement Agreement, including measures to prevent pollution; 2) a description of all data anticipated and activities scheduled for the next seven (7) calendar days or, if applicable, the period specified in writing by the EPA Project Coordinator; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for completion of such actions; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the response action, RAP and schedule made in accordance with Section XIV of this Settlement Agreement during the reporting period.

- 8.8 Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Settlement Agreement, shall be sent by electronic methods (email or ftp site), or by certified or overnight mail to the EPA Project Coordinator designated pursuant to Section IX.
- 8.9 All reports, plans, approval letters, specifications, schedules, and attachments required by this Settlement Agreement are subject to EPA approval and shall be deemed incorporated into this Settlement Agreement upon approval by EPA. In the event that EPA approves a portion of the RAP, report, or other item required to be submitted under this Settlement Agreement, the approved portion shall be enforceable under this Settlement Agreement. In the event of conflict between this Settlement Agreement and any document attached hereto, incorporated in or enforceable hereunder, the provisions of this Settlement Agreement shall control. In the event that EPA disapproves any required submission, EPA will (1) specify the deficiencies in writing, and/or (2) submit its own modifications to the Respondents to accomplish the Work outlined in paragraph 8.3 above. Respondents shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within five (5) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Settlement Agreement. In the event that EPA submits its own modifications to the Respondents, the Respondents are hereby required to incorporate such modifications. Any non-compliance with EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval, or non-compliance with an EPA-required modification shall be considered a failure to comply with a requirement of this Settlement Agreement. Determination(s) of non-compliance will be made by EPA.
- 8.10 In addition to the information and documents otherwise required by this Settlement Agreement, and subject to the terms of Paragraph 11.5, Respondents shall provide to EPA, upon written request, any and all information and documents in any of their possession, custody, or control related to the Site including, but not limited to, Site analytical data (including raw data); Site safety data; Site monitoring data; operational

logs; copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage, or disposal facility); the identity of treatment, storage, and/or disposal facilities used; the identity of transporters used; the identity of any contractors, subcontractors, and supervisory personnel used; information and documents concerning Respondents' compliance with Quality Assurance and Quality Control requirements of this Settlement Agreement; information and documents relating to Respondents' efforts to secure access; and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.

- 8.11 Within 30 calendar days of the date Respondents conclude they have completed implementation of the RAP and the items identified in paragraph 8.3, Respondents shall submit a written Final Report to EPA, subject to EPA approval described in paragraph 8.9 above. The written report shall detail the work undertaken to implement the RAP and the items identified in paragraph 8.3, and shall be certified by Respondents in accordance with the terms of Section XXII of this Settlement Agreement. EPA will review the adequacy of Respondents' implementation of the RAP and accomplishment of items specified in paragraph 8.3 above. EPA will notify Respondents, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the items identified in paragraph 8.3 and the actions required to correct such discrepancies or deficiencies. Within five (5) business days of receipt of notification by EPA, or as otherwise specified by EPA, Respondents shall, as directed by EPA, amend the Final Report, develop an additional plan or amend the existing RAP to address such discrepancies or deficiencies. Any additional plan or amendment to the RAP will be subject to the approval procedures outlined in paragraphs 8.5 and 8.9 above. Respondents shall perform all actions approved by EPA in a manner consistent with the NCP and all applicable Federal laws and regulations, as required by the NCP.
- 8.12 Respondents shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Settlement Agreement and all applicable Federal, State, and local laws and regulations, as required by the NCP. Any transfer of hazardous substances, pollutants, and contaminants from the Site to an off-site facility required by this Settlement Agreement shall be performed in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3). In addition, any transfer of hazardous substances, pollutants, and contaminants from the Site to an off-site facility for treatment, storage, or disposal required by this Settlement Agreement shall be performed in accordance with 40 C.F.R. § 300.440.
- 8.13 Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the RAP developed hereunder until receiving written EPA approval to proceed pursuant to paragraph 8.6. No Respondent shall interfere in any way with the performance of Work

in accordance with this Settlement Agreement by any other Respondent(s), nor may any Respondent impede or prevent any other Respondent(s) from reasonable access to any area of the Site to comply with the requirements of this Settlement Agreement.

- 8.14 Respondents shall immediately notify EPA's Project Coordinator and the National Response Center [(800) 424-8802], and any other party required by law in the event of any action or occurrence during the pendency of this Settlement Agreement that causes or threatens to cause an additional release of hazardous substances, pollutants, or contaminants on, at, or from the Site, or which may create a danger to public health, welfare, or the environment.
- 8.15 In the event that EPA believes that response action or other activities at the Site by the Respondents are causing or may cause a release or potential release of hazardous substances, or are a threat to public health or welfare or to the environment, EPA may, in its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such actual or potential releases or threats.

IX. DESIGNATED PROJECT COORDINATORS

- 9.1 Respondents shall designate a Project Coordinator and shall notify EPA of such designation no later than five (5) calendar days after the effective date of this Settlement Agreement. Designation of a Project Coordinator shall not relieve Respondents of their obligation to comply with the requirements of the Settlement Agreement. The Respondents' Project Coordinator shall be a technical and/or managerial representative of the Respondents and may be a contractor and/or consultant; provided, however, the Respondents' Project Coordinator shall not be their legal representative in this matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondents shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondents and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Settlement Agreement, including plans, reports, approvals and other correspondence, shall be directed to the Project Coordinators.
- 9.2 The Project Coordinator for EPA is:

Michael Towle
On-Scene Coordinator
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- 9.3 Respondents shall have the right to change their Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.
- 9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to Respondents. EPA's intent is to notify the Respondents as soon as practicable following any such change of its Project Coordinator.
- 9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.
- 9.6 The EPA Project Coordinator shall have the authority to halt or modify Work or other activities performed by Respondents at the Site in order to eliminate a release or threat of release of hazardous substances. Such direction by the EPA Project Coordinator may be given verbally or in writing. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

- 10.1 Respondents shall use quality assurance, quality control, and other technical activities and chain-of-custody procedures for all samples consistent with “*EPA Requirements for Quality Assurance Project Plans (QA/R5)*” (EPA/240/B-01/003, March 2001, reissued May 2006), “*Guidance for Quality Assurance Project Plans (QA/G-5)*” (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.
- 10.2 The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondents shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. ACCESS

- 11.1 Respondents do not own or control the Site. Respondents, as EPA Designees, will access the Site to implement this Settlement Agreement in accordance with the provisions for Site access for EPA and EPA Designees provided for in paragraph 6 of the Settlement Agreement Respecting Environmental Objections to Debtors’ Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Case No. 03-45870-399) (“the Bankruptcy Settlement”). Under the terms of the Bankruptcy Settlement, the Four Sites Union Trust, the owner of the Site, has agreed to provide EPA and EPA Designees

with access to the Site at all times for the purpose of, among other things, implementing a response action at the Site.

- 11.2 In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants, and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is being performed at all reasonable times for the purposes of, inter alia: inspecting Work, records, operating logs and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Settlement Agreement; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to the Work.
- 11.4 Respondents may make a claim of business confidentiality for information submitted pursuant to this Settlement Agreement in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to Respondents.
- 11.5 The Respondents may withhold those records and documents covered by any privilege or protection recognized under federal law and applied by federal courts in actions commenced by the United States. In the event that the Respondents withhold a document as privileged, the Respondents shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s) and addressee(s)/recipient(s), a description of the nature of the document, and identification of the privilege asserted at the time such document is required to be provided to EPA.
- 11.6 No claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Settlement Agreement including, but not limited to, sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site. Nor shall such claims be made for analytical data; Site safety data; Site monitoring data; operational logs; hazardous waste manifests; identities of treatment, storage and/or storage facilities used; identities of transporters used; identities of any contractors or subcontractors used in performing work required by this Settlement Agreement.

- 11.7 Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

XII. DISPUTE RESOLUTION

- 12.1 Except as provided elsewhere in this Settlement Agreement, if the Respondents object to any EPA notification of deficiency, disapproval, or other EPA action taken pursuant to this Settlement Agreement, including billings for oversight costs, the Respondents shall notify EPA in writing of their objection(s) within 14 calendar days of receipt of such notification or action.
- 12.2 EPA and the Respondents shall have 14 calendar days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this 14-day period, EPA will provide a written statement of its decision to the Respondents. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section XII.
- 12.3 In order to prevail in any dispute regarding oversight costs, Respondents must demonstrate that the costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.
- 12.4 Following resolution of the dispute, as provided by this Section XII, Respondents shall perform the Work that was the subject of the dispute in accordance with the agreement reached or EPA's decision. To the extent that Respondents do not prevail upon resolution of any dispute involving any contested costs other than oversight costs, Respondents shall submit to EPA, within 14 calendar days of receipt of such resolution, all such costs determined to be owed to EPA, including any accrued interest, as specified in paragraph 13.1 below. Payment of oversight costs, including interest, following resolution of a dispute shall be governed by Paragraph 21.3 of this Settlement Agreement.
- 12.5 Notwithstanding any other provision of this Settlement Agreement, no action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

- 13.1 For each day, or portion thereof, that Respondents fail to comply with any requirement of this Settlement Agreement at the time and in the manner set forth herein, the Respondents shall be liable upon demand to EPA for the sums specified in paragraph 13.4 as stipulated penalties. Respondents shall make payment to EPA within 30 calendar days of receipt of demand by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site/Spill ID Number A3DE and the EPA docket number for this action, CERC-03-2015-0173DC.

In the alternative, Respondents may make payment by official bank check within 30 calendar days of receipt of demand. Respondents shall make payment by official bank check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, Site/Spill ID Number A3DE, and the EPA docket number for this action, CERC-03-2015-0173DC, and shall be sent to:

US Environmental Protection Agency

Superfund Payments

Cincinnati Finance Center

PO Box 979076

St. Louis, MO 63197-9000

- 13.2 Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty day period pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- 13.3 At the time of payment, Respondents shall send notice that payment has been made to OSC Michael Towle at the address listed in paragraph 9.2 of this Settlement Agreement, to Daria Arnold at Arnold.daria@epa.gov and to the EPA Cincinnati Finance Office either by email at cinwd_acctsreceivable@epa.gov, or by mail to

U.S. Environmental Protection Agency

Cincinnati Finance Center

26 W. Martin Luther King Drive

Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number A3DE and the EPA docket number for this action, CERC-03-2015-0173DC.

- 13.4 Stipulated penalties shall accrue in the amount of \$1 ,000 per calendar day per violation. Neither the accrual of nor demand for stipulated penalties set forth in this Section XIII

shall preclude EPA from pursuing other penalties or sanctions available to EPA for Respondents' failure to comply with the requirements of this Settlement Agreement.

XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY

- 14.1 The Respondents, through their Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Settlement Agreement. Such notification shall be made verbally as soon as possible, but not later than two (2) calendar days after Respondents or any one of them becomes aware or should have become aware of any such delay or anticipated delay, and in writing no later than seven (7) calendar days after Respondents or any one of them becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by the Project Coordinator in accordance with Section XXII of this Settlement Agreement and shall fully describe the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent, and/or minimize further delay; and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall ensure that their Project Coordinator provides Respondents with immediate notification of any project delays. The Respondents shall adopt all reasonable measures to avoid and minimize such delay.
- 14.2 To the extent Respondents intend to claim that any delay or anticipated delay described by Respondents in accordance with paragraph 14.1 was or will be caused by circumstances beyond each of their control, Respondents shall, within 14 calendar days after Respondents become aware, or should have become aware, of such delay or anticipated delay, submit to EPA a "Notice of Force Majeure" in which Respondents fully demonstrate that the delay was caused by circumstances beyond each of their control that could not have been overcome by due diligence, the necessity of the proposed length of the delay, and that the Respondents took and are taking all reasonable measures to avoid and minimize delay. The Respondents shall have the burden of proving these facts to EPA. Any "Notice of Force Majeure" shall be certified by a responsible official of Respondents or Respondents' Project Coordinator pursuant to paragraph 22.1.b of this Settlement Agreement.
- 14.3 Any such delay that EPA determines (1) has resulted or will result from circumstances beyond the control of the Respondents or any of them, and (2) that could not and cannot be overcome by due diligence on the Respondents' part, shall not be deemed to be a violation of Respondents' obligation(s) under this Settlement Agreement, and shall not subject Respondents to stipulated penalties under this Settlement Agreement for that particular delay. In such event, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the requirements of this Settlement Agreement or changed

economic circumstances shall not be considered circumstances beyond the control of the Respondents. Delay in one item or component of Work or the RAP does not justify delay in timely achievement of other items or components. Each delay must be separately addressed and substantiated according to the provisions of paragraphs 14.1 and 14.2 above.

- 14.4 Failure of the Respondents to comply with the notice requirements of paragraphs 14.1 and 14.2 above shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.
- 14.5 In the event that EPA and the Respondents cannot agree that any delay in compliance with the requirements of this Settlement Agreement has been or will be caused by circumstances beyond the control of the Respondents that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII (Dispute Resolution) of this Settlement Agreement.

XV. RESERVATION OF RIGHTS

- 15.1 The covenant not to sue set forth in Section XXVIII below does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:
 - a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
 - b. liability for costs other than oversight costs recoverable under Section XXI of this Settlement Agreement;
 - c. liability for performance of response action other than the Work;
 - d. criminal liability;
 - e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
 - f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
 - g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

- 15.2 Except as expressly provided in this Settlement Agreement, (1) each party reserves all rights, claims, interests and defenses it may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, including the right to seek injunctive relief and/or the imposition of statutory penalties.
- 15.3 As provided by this Settlement Agreement, EPA expressly reserves its right to disapprove of Work performed by Respondents; to halt Work being performed by Respondents if Respondents have not complied with an approved RAP or this Settlement Agreement, or at any time EPA deems necessary to protect public health, welfare, or the environment and to perform such Work; to request and require hereunder that Respondents correct and/or re-perform any and all Work disapproved by EPA; and/or to request or require that Respondents perform response actions in addition to those required by this Settlement Agreement. Further, EPA reserves the right to undertake response action at any time EPA deems appropriate. In the event EPA requires Respondents, and Respondents decline, to correct and/or re-perform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Settlement Agreement, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take any other action authorized by law.
- 15.4 EPA reserves the right to bring an action against the Respondents for recovery of all recoverable costs incurred by the United States related to this Settlement Agreement that are not reimbursed by the Respondents, as well as any other costs incurred by the United States in connection with response actions conducted at the Site.
- 15.5 This Settlement Agreement concerns certain response actions (Work described in Section VIII, above) concerning the Site. Such response actions might not fully address all contamination at the Site. Subsequent response actions, which may be deemed necessary by EPA, are not addressed by this Settlement Agreement. Subject to the covenant not to sue set forth in Section XXVIII, EPA reserves all rights including, without limitation, the right to institute legal action against Respondents and/or any other parties in connection with the performance of any response actions not addressed by this Settlement Agreement.
- 15.6 Nothing in this Settlement Agreement shall limit the authority of the EPA On-Scene Coordinator as outlined in the NCP and CERCLA.

XVI. OTHER CLAIMS

- 16.1 Nothing in this Settlement Agreement shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not bound by this Settlement Agreement for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

XVII. OTHER LAWS

- 17.1 All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate Commonwealth and Federal laws and regulations, as required by the NCP.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

- 18.1 The effective date of this Settlement Agreement shall be the date on which it is signed by EPA.
- 18.2 This Settlement Agreement may be amended by mutual agreement of EPA and the Respondents. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.
- 18.3 Any reports, plans, specifications, schedules, or other submissions required by this Settlement Agreement are, upon approval by EPA, incorporated into this Settlement Agreement. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Settlement Agreement and will subject the Respondents to the requirements of Section XIII (Delay in Performance and Stipulated Penalties), above. Determinations of non-compliance will be made by EPA.
- 18.4 No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondents or the requirements of this Settlement Agreement will be construed as relieving the Respondents of their obligation to obtain formal approval when required by this Settlement Agreement, and to comply with the requirements of this Settlement Agreement unless formally modified.

XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

- 19.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, or of their employees, agents, servants, receivers, successors, or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondents in carrying out the Work.

XX. INDEMNIFICATION AND HOLD HARMLESS

- 20.1 Respondents agree to indemnify and hold harmless the United States, its agencies, departments, agents, officers, employees, and representatives from any and all causes of action caused by any acts or omissions of Respondents or their contractors in carrying out the Work required by this Settlement Agreement.

XXI. REIMBURSEMENT OF OVERSIGHT COSTS

- 21.1 EPA shall submit to Respondents periodic and/or a final accounting(s) of oversight costs incurred by the U.S. Government with respect to this Settlement Agreement. Oversight costs shall consist of all costs, including indirect costs, incurred by EPA, its employees, agents, contractors, consultants, and other authorized and/or designated representatives in connection with EPA's oversight of the Work.
- 21.2 Respondents shall, within 30 calendar days of receipt of the accounting, remit a check for the amount of those costs made payable to the "Hazardous Substance Superfund." Interest at a rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), shall begin to accrue on the unpaid balance from the day after the expiration of the 30-day period notwithstanding any dispute or an objection to any portion of the costs. Checks shall specifically reference the Site and shall be transmitted as specified in Section XIII of this Settlement Agreement.
- 21.3 In the event the Respondents dispute, pursuant to Section XII of this Settlement Agreement, payment of any costs identified in the accounting provided pursuant to Paragraph 21.1, the Respondents shall establish an interest-bearing escrow account in a federally-insured bank and remit to that escrow account funds equivalent to the amount of the contested costs. The Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established, as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the

Respondents shall initiate the Dispute Resolution procedures in Section XII of this Settlement Agreement. If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, the Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Section XIII of this Settlement Agreement. If the Respondents prevail concerning any aspect of the contested costs, the Respondents shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Section XIII of this Settlement Agreement; Respondents shall be disbursed any balance of the escrow account.

- 21.4 The total amount to be paid by Respondents pursuant to this Section XXI shall be deposited in the Metal Bank of America, Inc. Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

XXII. CERTIFICATION OF COMPLIANCE

- 22.1 Unless otherwise required by the terms of this Settlement Agreement, the written Final Report required by paragraph 8.11 of this Settlement Agreement, any written notification described in paragraph 12.1 of this Settlement Agreement, and any "Notice of Force Majeure" described in paragraph 14.2 of this Settlement Agreement shall be certified by each Respondent, a responsible official of each Respondent, or by the Project Coordinator for the Respondents. The term "responsible official" means: (I) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.
- 22.2 The certification required by paragraph 22.1 of this Settlement Agreement shall be in the following form:

I certify that the information contained in or accompanying this (specify type of submission) is true, accurate and complete.

I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Name (print): _____
Title: _____

- 22.3 Submission of documents pursuant to this Settlement Agreement that are found by EPA to contain false information shall constitute a failure to comply with this Settlement Agreement and shall subject Respondents to, among other things, stipulated penalties whether or not a responsible official of Respondents has certified the document.

XXIII. SHIPMENT OF HAZARDOUS SUBSTANCES

- 23.1 Respondents shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the notification to EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards or 110 gallons of liquid materials. Notifications to States in those circumstances shall be governed by applicable state law.
- 23.2 The notification required by paragraph 23.1 shall be in writing and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation of the hazardous substances. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.
- 23.3 The identity of the receiving facility and state will be determined by Respondents. Respondents shall provide all relevant information, including information required by paragraph 23.1, above, relating to the off-site shipments as soon as practicable but no later than one (1) business day before the hazardous substances are actually shipped.

XXIV. RECORD RETENTION

- 24.1 Until six (6) years after Respondents' receipt of EPA's notification pursuant to Paragraph 27.1 (Notice of Completion), Respondents shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until six (6) years after Respondents' receipt of EPA's notification pursuant to Paragraph 27.1 (Notice of Completion), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature,

or description relating to performance of the Work until six (6) years after Respondents' receipt of EPA's notification pursuant to Paragraph 27.1 (Notice of Completion).

- 24.2 At the conclusion of this document-retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

XXV. [RESERVED]

XXVI. DEFINITIONS

- 26.1 "Business days," as used in this Settlement Agreement, shall mean every day of the week except Saturdays, Sundays, and federal holidays.
- 26.2 "Calendar days," as used in this Settlement Agreement, shall mean every day of the week, including Saturdays, Sundays, and federal holidays.
- 26.3 "Days," as used in this Settlement Agreement, shall mean "calendar days" unless specified otherwise.
- 26.4 "Work," as used in this Settlement Agreement, shall mean all requirements of this Settlement Agreement, including any modifications hereto.
- 26.5 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.

XXVII. NOTICE OF COMPLETION

- 27.1 When EPA determines, after EPA's review and approval of the Final Report required pursuant to paragraph 8.11 of this Settlement Agreement, that all response action specified in Section VIII of this Settlement Agreement has been fully performed, and upon receipt of costs and penalties assessed by EPA, with the exception of any continuing obligations required by this Settlement Agreement, including those requirements specified in Sections XV ("Reservation of Rights"), XVI ("Other Claims"), XIX ("Liability of the United States"), XX ("Indemnification and Hold Harmless"),

XXIV ("Record Retention"), and XXV ("Post Removal Site Control"), EPA will provide a notice of completion to the Respondents.

XXVIII. COVENANT NOT TO SUE BY EPA

- 28.1 From the effective date of this Settlement Agreement, and for as long as EPA determines that the terms of this Settlement Agreement, including any modifications made hereto, are being fully complied with, and except for any proceeding to enforce its terms or collect any applicable costs or penalties, EPA agrees not to sue or take any administrative action against the Respondents for the Work required by this Settlement Agreement, including for reimbursement of costs incurred in connection with this Settlement Agreement.
- 28.2 Nothing in this Settlement Agreement shall be construed to limit the rights EPA has reserved under Section XV of this Settlement Agreement.
- 28.3 Nothing in this Settlement Agreement shall be construed to grant any rights to persons not a party to this Settlement Agreement. Further, nothing in this Settlement Agreement precludes the United States or the Respondents from asserting any claims, causes of action, or demands against any person not parties to this Settlement Agreement for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

XXIX. COVENANT NOT TO SUE BY RESPONDENTS

- 29.1 Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, oversight costs paid under this Settlement Agreement, or this Settlement Agreement including, but not limited to:
 - a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
 - b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 29.3 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 15.1.b, c, and e-g, but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

- 29.2 Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).
- 29.3 Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if
 - a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.
 - b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Respondents may have against any person if such person asserts a claim or cause of action relating to the Site against Respondents.

XXX. CONTRIBUTION

- 30.1 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Respondents are entitled, as of the effective date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and payment of costs under Section XXI of this Settlement Agreement.

- 30.2 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondents have, as of the effective date of this Settlement Agreement, resolved their liability to the United States for the Work and payment of costs under Section XXI of this Settlement Agreement.
- 30.3 Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

XXXI. DISBURSEMENT FROM EPA SPECIAL ACCOUNTS

- 31.0 Identification of Respondents as EPA's "Designee". On or after the effective date, EPA will notify the Administrator of the Union Trust that EPA has selected Respondents as an "EPA Designee," who, in accordance with Paragraph 3 of the 2003 Settlement Agreement Respecting Environmental Objections to Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Case Number 03-45870-399), is entitled to submit disbursement notices to and receive payments for costs of investigation at the Site from the State Road Account, which was established under the 2003 Discharge Order Funding Agreement, as modified by the 2008 Fund Transfer Agreement.
- 31.1 Reimbursement of Covered Costs. For purposes of this Settlement Agreement, "Covered Costs" shall mean costs paid by Respondents for the Work after the effective date, including without limitation any costs incurred by Respondents to develop and implement the RAP, as well as any costs incurred by Respondents to investigate conditions at the Site and to determine the feasibility of the Work. All Covered Costs shall be eligible for reimbursement from the Metal Bank of America, Inc. Superfund Site Disbursement Special Account within the EPA Hazardous Substance Superfund (hereinafter "the Disbursement Special Account"), which EPA will establish within 60 days of the effective date, in accordance with Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3). Any Covered Costs incurred by Respondents for Site investigations may be eligible for reimbursement from the State Road Site Account established under the 2008 Fund Transfer Agreement between the United States and the Four Sites Union Settlement Trust ("Union Trust").

a. Timing, Amount, and Method of Disbursing Funds from the Disbursement Special Account.

- (1) Subject to the terms, conditions, and limitations set forth in this Settlement Agreement, EPA agrees to make \$250,000, and interest earned, available for disbursement from the Disbursement Special Account to Respondents for reimbursement of Covered Costs. For purposes of this paragraph, "interest earned" shall mean interest earned on the Disbursement Special Account from the date any funds are transferred to it by EPA. Interest earned shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time interest accrues.
- (2) Within 60 days of EPA's receipt of a Cost Summary and Certification from Respondents, as defined by Paragraph 31.1.c, or if EPA has requested additional information under Paragraph 31.1.c or a revised Cost Summary and Certification under Paragraph 31.1.d, or within 60 days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section XXXI, EPA intends to disburse the funds from the Disbursement Special Account to Respondents by electronic wire transfer to an account identified in writing by Respondents.
- (3) No disbursement to Respondents from the Disbursement Special Account shall occur until after EPA has satisfied its obligations to reimburse the Commonwealth of Pennsylvania Department of Transportation under the April 20, 2015 Administrative Settlement Agreement for Performance of Removal Response Action under Section 122(a) of CERCLA (EPA Docket No. CERC-03-2015-0016DC) described in Paragraph 3.11 above.

b. Timing, Amount, and Method of Disbursing Funds from the State Road Account.

- (1) Respondents shall provide EPA with a separate Cost Summary and Certification for any Covered Costs incurred for Site investigations for which Respondents seek disbursement from the State Road Account.
- (2) Disbursements from the State Road Account shall be governed by the terms of the 2003 Discharge Order Funding Agreement, as modified by the 2008 Fund Transfer Agreement, which includes, among other things, the requirement that the Administrator of the Union Trust have the opportunity to review and approve any disbursement requests from the State Road Account.

c. Cost Summary and Certification. Respondents shall periodically submit to EPA a Cost Summary and Certification, as defined in this Paragraph 31.1.c, covering the Work performed under this Settlement Agreement for which Respondents seek reimbursement from the Disbursement Special Account. Each Cost Summary and

Certification shall include a complete and accurate written summary and certification of the Covered Costs identified in the particular submission. Each Cost Summary and Certification shall also contain the following statement signed by Respondents' Project Coordinator:

"To the best of my knowledge, after thorough investigation and review of Respondents' documentation of costs incurred and paid for Work performed pursuant to the Settlement Agreement between EPA and Respondents, I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment."

Respondents' Project Coordinator shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Respondents shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

- d. Recalculation of Covered Costs. If EPA finds that a Cost Summary and Certification includes a mathematical accounting error, costs that are inadequately documented, costs that are not within the definition of Covered Costs, or costs submitted in a prior Cost Summary and Certification, EPA will notify Respondents and provide an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Respondents fail to cure the deficiency within 30 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Respondents' costs eligible for disbursement for that submission and disburse the corrected amount to Respondents in accordance with the procedures in this Paragraph 31.1. Respondents may dispute EPA's recalculation under this Paragraph by providing EPA with a written statement detailing the basis for Respondents' dispute and requesting that EPA correct the recalculation. Resolution of any dispute under this Paragraph 31.1.d shall be made in accordance with dispute resolution procedures set forth in Section XII of this Settlement Agreement, except any disputes arising from requests for disbursement from the State Road Account shall be governed by the dispute-related provisions of the 2003 Discharge Order Funding Agreement, as modified by the 2008 Fund Transfer Agreement. In no event shall Respondents be disbursed funds from the Disbursement Special Account or the State Road Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

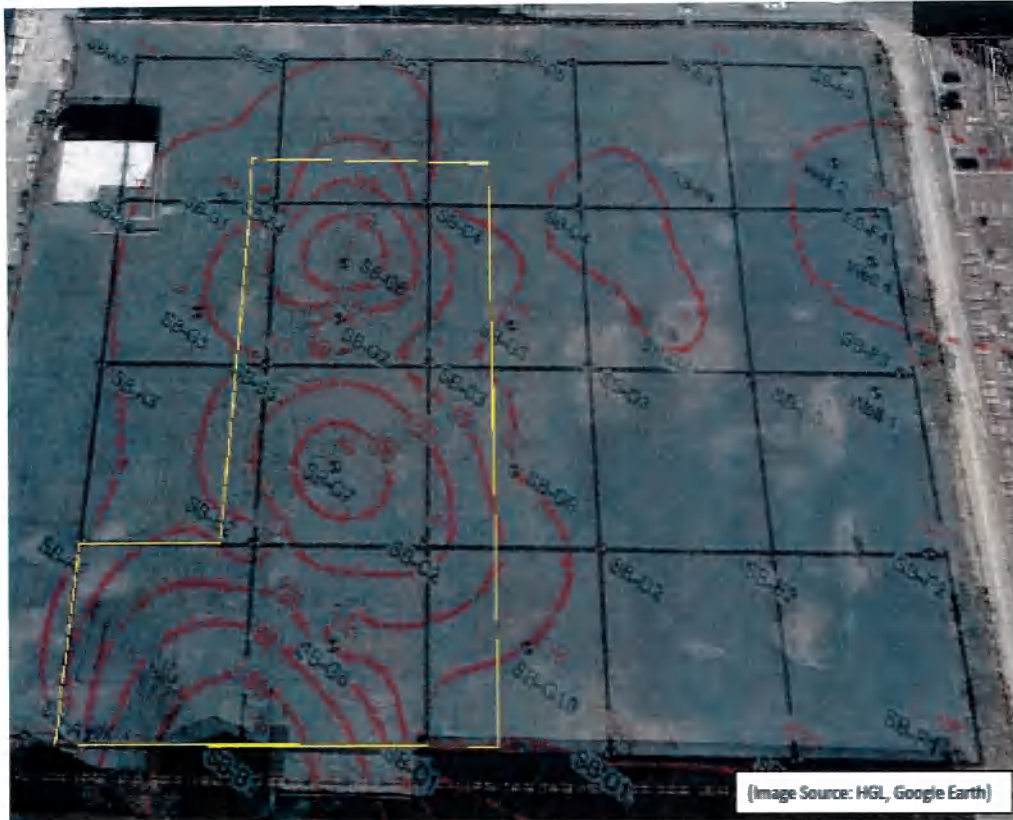


Figure 1 - Area of Work

FOR RESPONDENT: Consolidated Edison Company of New York, Inc.

By: Carolyn W. Jaffe
[Signature]


Please Type the Following:

Name: Carolyn W. Jaffe

Title: Associate General Counsel

Address: 4 Irving Place, New York, N.Y. 10003

FOR RESPONDENT: Baltimore Gas & Electric Company


[Signature]

Please Type the Following:

Name: H. Alfred Ryan

Title: Assistant General Counsel
Exelon Business Services Co.

Address: 2301 Market Street
Philadelphia, PA 19103

FOR RESPONDENT: Delmarva Power & Light Company


[Signature]

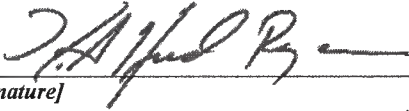
Please Type the Following:

Name: H. Alfred Ryan

Title: Assistant General Counsel
Exelon Business Services Co.

Address: 2301 Market Street
Philadelphia, PA 19103

FOR RESPONDENT: PECO Energy Company


[Signature]


Please Type the Following:

Name: H. Alfred Ryan

Title: Assistant General Counsel
Exelon Business Services Co.

Address: 2301 Market Street
Philadelphia, PA 19103

FOR RESPONDENT: Potomac Electric Power Company


[Signature]

Please Type the Following:

Name: H. Alfred Ryan

Title: Assistant General Counsel
Exelon Business Services Co.

Address: 2301 Market Street
Philadelphia, PA 19103

[Signature]

Name: Jon R. Mostel

Title: General Counsel and Secretary

Address: 333 Earle Ovington Blvd., 4th Fl., Uniondale, New York 11553

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FOR RESPONDENT: Orange and Rockland Utilities, Inc.

By: Carolyn W. Jaffe
[Signature]

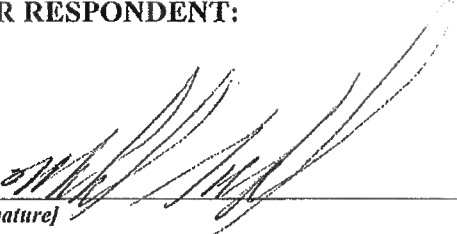
Please Type the Following:

Name: Carolyn W. Jaffe

Title: Associate General Counsel

Address: 4 Irving Place, New York, N.Y. 10003

FOR RESPONDENT:


[Signature]

Please Type the Following:


Name: Michael Hasel

Title: Manager – PPL EU Environmental Compliance

Address: 1639 Church Road, Allentown PA 18104

Date: July, 8 2016

FOR RESPONDENT: Public Service Electric and Gas Company


[Signature]

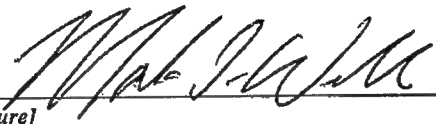
Please Type the Following:

Name: Jorge L. Cardenas

Title: VP - Asset Management and Centralized Services

Address: 80 Park Plaza, Newark, NJ 07102

FOR RESPONDENT Virginia Electric and Power Company:



[Signature]


Please Type the Following:

Name: Mark O. Webb

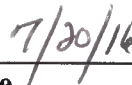
Title: Senior Vice President, General Counsel and Chief Risk Officer

Date: 7/1/2016

FOR EPA:



DOMINIQUE LUECKENHOFF
Acting Director, Hazardous Site Cleanup Division
U.S. Environmental Protection Agency
Region III



Date